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February 5, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TWA325  
Washington, DC 20554

*Via Hand Delivery*

**Re: MM Docket No. 97-138**

Dear Ms. Salas:

Enclosed herewith, for filing on behalf of Hearst-Argyle Television, Inc. is an original and four copies of its Ex Parte Comments in the above-referenced docket.

Please direct any questions that you may have regarding these comments to the undersigned.

Sincerely,

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

Mark J. Prack  
Counsel to Hearst-Argyle Television, Inc.

MJP/kws  
Enclosure  
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cc: Chairman William E. Kennard (w/enc.)  
Commissioner Harold Furchtgott-Roth (w/enc.)  
Commissioner Susan Ness (w/enc.)  
Commissioner Michael K. Powell (w/enc.)  
Commissioner Gloria Tristani (w/enc.)  
Jack N. Goodman, Esquire (w/enc.)

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OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Rules	)	MM Docket No. 97-138
regarding the main studio and	)	RM-8855
local public inspection files of	)	RM-8856
broadcast television and radio stations	)	RM-8857
	)	RM-8858
47 C.F.R. §§ 73.1125,	)	RM-8872
73.3536 and 73.3527	)	

To: The Commission

*Two copies of these Ex Parte Comments have been submitted to the Secretary  
in compliance with 47 C.F.R. § 1.1206*

**EX PARTE COMMENTS OF  
HEARST-ARGYLE TELEVISION, INC**

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February 8, 1999

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**FEB 8 8 1999**

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To: The Commission

*Two copies of these Ex Parte Comments have been submitted to the Secretary in compliance with 47 C.F.R. § 1.1206*

**EX PARTE COMMENTS OF  
HEARST-ARGYLE TELEVISION, INC**

Hearst-Argyle Television, Inc. ("Hearst-Argyle"), by its attorneys, hereby files the following ex parte comments in support of the *Petition for Partial Reconsideration and Clarification of the Revised Public Inspection File Rule for Broadcast Stations Submitted by the National Association of Broadcasters* ("NAB Petition") and the *Limited Petition for Reconsideration by the Named State Broadcaster Associations* ("Associations Petition"), in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> Three other petitions for reconsideration were filed in this proceeding. Those other petitions do not concern the revised public inspection file rules as they apply to commercial broadcasters, and therefore, Hearst-Argyle does not address those petitions in these ex parte comments. Nonetheless, Hearst-Argyle supports those petitions to the extent that they propose relieving unnecessary burdens on broadcasters.

Hearst-Argyle is a publicly-traded company that currently owns or manages seventeen television stations and two radio stations in geographically diverse markets. The company's television stations reach more than 12% of United States television households. Hearst-Argyle is in the process of acquiring the broadcast group of Pulitzer Publishing Company ("Pulitzer"). Pulitzer currently owns and operates nine television stations and five radio stations. The Commission has approved the transfer, and the transaction is expected to close shortly. After completing the Pulitzer acquisition, Hearst-Argyle will have twenty-six television stations covering significant portions of twenty states, in addition to seven radio stations. The completed transactions will bring Hearst-Argyle's reach to more than 17.5% of United States television households, making Hearst-Argyle one of the nation's two largest non-network owners of local television stations.

### **Introduction**

The NAB Petition and the Associations Petition ask the Commission to partially reconsider several portions of the revised public inspection file rules which the Commission adopted in the above-captioned proceeding on July 27, 1998. Specifically, the petitions request reconsideration and clarification concerning (1) the duties of broadcasters with regard to assisting the public when telephone requests are made;<sup>2</sup> (2) the scope of the new telephone request rule;<sup>3</sup> and (3) the requirement that stations maintain e-mail messages in the public file.<sup>4</sup> Hearst-Argyle generally commends the Commission's modifications of its main studio and public file rules as striking an

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<sup>2</sup> See NAB Petition at 3-5, 11-12; Associations Petition at 6-9.

<sup>3</sup> See NAB Petition at 7-11.

<sup>4</sup> See *id.* at 5-6; Associations Petition at 9-10.

appropriate balance between ensuring that the public has reasonable access to broadcast stations and minimizing regulatory burdens on licensees. However, several aspects of the new rules are overly burdensome, and thus Hearst-Argyle supports the requests by the NAB and the Associations that the Commission reconsider certain aspects of the public file rules.<sup>5</sup>

#### **I. The Duties Imposed by the "Telephone Request" Rule Should Be Reconsidered**

The revised public inspection file rules require broadcast stations to "make available, by mail upon telephone request, photocopies of documents in the [public] file,"<sup>6</sup> to "pay postage,"<sup>7</sup> and to "assist members of the public in identifying the documents they may ask to be sent to them by mail."<sup>8</sup>

This new "telephone request" rule imposes significant burdens on broadcasters. Hearst-Argyle stations have already received burdensome requests for hundreds of pages of documents from college students and advertising agencies. For example, WPTZ-TV, Plattsburgh, New York, recently received a fax demand for over 400 pages of documents from its political file from a college student located hundreds of miles away -- in New Jersey. The student, who was working on a paper with a deadline, demanded that the documents be sent by overnight courier. It is likely that stations

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<sup>5</sup> Hearst-Argyle also supports NAB's requests (1) that the Commission clarify the revised public inspection file rule to indicate that only the major applications which require public notice are required to be maintained in the public file, and not all applications filed with the Commission; and (2) that the Commission put the new version of "The Public and Broadcasting" manual out for public comment prior to distribution.

<sup>6</sup> 47 C.F.R. § 73.3526 (c)(2) (effective Oct. 30, 1998).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

will be flooded by even more such calls, particularly during political campaigns, as political candidates and their representatives are the heaviest visitors to and users of a station's public file.

In addition to the potential for a flood of legitimate calls, there is a high possibility that the "telephone request" rule will be used by callers in bad faith. Any viewer or organization who disapproves of a station's operation or programming has the opportunity to target the station with numerous harassing public file phone requests from the comfort and privacy of their own home. In addition to the likelihood that calls will be numerous, calls will also be lengthy given the breadth of documents that can be discussed and requested for copying and mailing. Although the new rule only requires stations to assist in identifying documents, it is inevitable that station employees will be drawn into questions about the substance and purpose of the documents in the public file.

It will be overly burdensome for stations to handle numerous and lengthy phone requests. For every request, stations will have to "assist" the caller, photocopy, and mail the requested documents. To be prepared for telephone requests, stations will have to dedicate significant resources to train staff members who must become intimately familiar with each and every document in the public inspection file. Stations will have to develop and constantly update procedures to help employees answer the most detailed questions about their station's public file. Larger stations will likely have to hire more employees to handle telephone requests. For smaller stations who cannot afford more staff members, employees who have other responsibilities and are involved in other operations of the station will have to neglect those responsibilities in order to respond to telephone requests. Moreover, it appears likely that political candidates' representatives will claim that the station is "favoring" one candidate over another if the person(s) most knowledgeable about the

political file are not always immediately available. The Commission should not needlessly create this kind of climate for local stations.

While worthy in intent, the “telephone request” rule will significantly burden broadcasters, and is thereby simply unworkable in practice. Thus, the Commission should reconsider and eliminate this requirement.

## **II. The Scope of the “Telephone Request” Rule Should Be Clarified and Reconsidered**

Even if the Commission retains the “telephone request” rule, the Commission should: (1) clarify that this requirement only requires stations to help callers in *identifying* available documents; (2) exclude the political file from the rule; (3) limit the mailing of documents to within the service area of the station at the cost of the person making the request; and (4) exclude all stations from the rule who have not relocated their main studio relying upon the increased flexibility provided by the revised rules.

The “telephone request” rule requires stations to “assist”<sup>9</sup> callers in “identifying”<sup>10</sup> documents. It does not require stations to provide callers with substantive information. However, it is highly likely that callers will ask station employees to give them substantive information. For example, a caller might ask a station employee to tell him or her over the phone who the owners of the licensee are, what the disposition of a request for political broadcast time was, who the officers are of entities that pay for political advertisements, or whether the station considers a particular program as “core” children’s programming. Were stations required to provide substantive responses

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

to such questions, station employees would essentially become public inspection file research assistants. Although the Commission's rule and accompanying order provide some guidance on what stations must do to satisfy the requirements that they assist callers in *identifying* documents, the Commission should clarify that stations are not required to provide assistance by researching and providing substantive information.

Also, the Commission must consider that political candidates and their representatives are the heaviest visitors to a station's public file. The disruption and burden that telephone requests for political file material will create will be significant. As mentioned earlier, stations will have to dedicate substantial resources to be prepared to adequately respond to telephone requests. Although political file information needs to be reasonably accessible, it is not unreasonable to expect that candidates and their representatives would be able to visit stations' main studios wherever they are located. Indeed, any burden that political candidates and their representatives would suffer by having to visit a station would be *significantly* less than that imposed on stations by requiring stations to respond to telephone requests. The Commission should reconsider its decision to impose this burden on stations. The Commission should exclude the political file from the telephone request rule.

Moreover, the Commission should limit the mailing of documents pursuant to a telephone request to within the local service area of the broadcast station. The purpose behind the public inspection file rule was to make information accessible to the *local* community so that the *local* community could play an active part in a dialogue with broadcasters.<sup>11</sup> Thus, it is only members of

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<sup>11</sup> See New Section 0.418 and Amendment of Sections 0.417, 1.580 and 1.594 of the Commission's Rules Relating to Inspection of Records, *Report and Order*, FCC 65-273, 4 Rad. Reg.



the public who reside in a station's *local* community who would have any need or interest in the contents of the public file. Because the public file is intended to assist the local community, the Commission should limit the mailing of public file documents pursuant to a telephone request to addresses within the station's service area -- at the expense of the person requesting the documents.

Finally, the Commission should exclude all stations from the telephone request rule whose main studios are currently located in their community of license and thereby are maintaining their main studios within the Commission's prior location restrictions. In the *Report and Order* accompanying the new rules, the Commission granted broadcasters increased flexibility in locating their main studio, and then developed the new telephone request rule so as to "ensure that public file material continue to be reasonably accessible to all members of the public."<sup>12</sup> The apparent intent of the telephone request rule is to provide an additional means of access in light of the new flexibility in the main studio location rules. Because there is no added burden to the public with respect to stations who maintain a main studio within the Commission's prior location restrictions, the Commission should exclude those stations from the new telephone request rule.

### **III. The Commission Should Clarify the Requirement that Stations Maintain E-Mail Messages in the Public File**

The Commission's revised public inspection file rules require that stations retain "comments and suggestions from the public regarding operation of the station" received via e-mail.<sup>13</sup> Although

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2d (P & F) 1665 (1965), ¶ 11.

<sup>12</sup> Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio station, *Report and Order*, FCC 98-177 (released Aug. 11, 1998), ¶ 24.

<sup>13</sup> See 47 C.F.R. § 73.3526 (e)(9).

the Commission provides some relief by permitting stations to retain only one copy of duplicative e-mails and to retain e-mails in electronic form, this new requirement threatens to impose significant burdens on broadcasters distinct from those which accompany retaining traditional letter correspondence.

In many instances, broadcast stations have several e-mail accounts. The station itself may have a “suggestion box” e-mail account, each employee of a station may have his or her own account, and individual programs may have their own e-mail accounts. As written, the new public inspection file rules would require that stations retain in the public file copies of e-mail messages to anyone at the station where any message regards “operation of the station.”<sup>14</sup>

To determine whether any e-mail received at the station should be publicly disclosed will require stations to engage in burdensome and intrusive reviews of each item of incoming e-mail for all e-mail accounts. Such e-mail monitoring will be time consuming and is a potential violation of each individual employee’s expectation of privacy in his or her personal e-mail messages. While broadcasters and the public should be encouraged to exploit the tremendous benefits of modern e-mail, monitoring burdens and privacy concerns should be minimized. The fair and simple balance would be for the Commission to require stations to retain only those e-mails which are received at the station’s publicized general e-mail address, or those specifically addressed to station management. The Commission should clarify the new public inspection file rules in this regard and thereby provide stations with greater certainty regarding which e-mails should be retained.

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<sup>14</sup> See 47 C.F.R. § 73.3526 (e)(9).

### Conclusion

Hearst-Argyle generally applauds the Commission's new public inspection file rules. However, as set forth above, several aspects of the new rules fail to strike an appropriate balance between ensuring that the public has reasonable access to broadcast stations and minimizing regulatory burdens on licensees. For the foregoing reasons, Hearst-Argyle supports the NAB Petition and the Associations Petition, and respectfully requests that the Commission clarify and reconsider its new public inspection file rules.

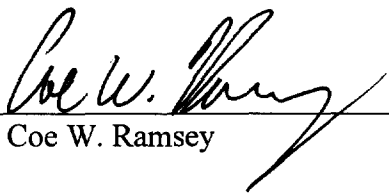
Respectfully submitted,

HEARST-ARGYLE TELEVISION, INC

By

  
Mark J. Prak

By

  
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*Counsel to Hearst-Argyle Television, Inc.*

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February 8, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of February, 1999 I caused the foregoing **EX PARTE COMMENTS OF HEARST-ARGYLE TELEVISION, INC** to be served on:

Chairman William E. Kennard  
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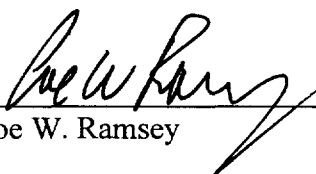
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